

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 23.6.106 pertaining to the Tow) PROPOSED AMENDMENT
Truck Complaint Resolution)
Committee)

TO: All Concerned Persons

1. On October 13, 2011, at 1:30 p.m., the Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than September 30, 2011, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

23.6.106 TOW TRUCK COMPLAINT RESOLUTION COMMITTEE –
JURISDICTION AND PROCEDURE (1) remains the same.

(2) As part of the annual inspection process, each tow truck operator shall submit a copy of its towing service rates to the Montana Highway Patrol. Tow truck operators may supplement their annual towing service rate filings at any time by notifying the Montana Highway Patrol in writing of any changes to towing service rates. The towing service rates must include at a minimum the operator's base rate of compensation per hour, per mile, or per pound for each class of equipment and any additional hourly rates or other charges that may be applied. Towing rates shall be submitted in writing to the Montana Highway Patrol at the same address as the MV5 form. The towing service rates submitted annually for each company shall be made available to the Tow Truck Complaint Resolution Committee. The towing service rates will be used by the Tow Truck Complaint Resolution Committee in evaluating the reasonableness of a charge and/or whether a charge is unfair or deceptive in the context of a consumer complaint.

(2) remains the same but is renumbered (3).

(34) Complaints must be signed and submitted in writing to the Office of Consumer Protection (OCP) in the Attorney General's Office, 2225 Eleventh Avenue, P.O. Box 200151, Helena, MT 59620-0151, ~~or a member of the committee.~~ The complaint must identify the tow truck operator against whom it is filed and include a description of the underlying facts giving rise to the complaint.

(45) After receiving a written complaint, the OCP shall forward a copy of the complaint to the tow truck operator complained of, who has 20 days to respond in writing to the OCP. If the tow truck operator fails to respond within 20 days, beginning on the 21st day, the tow truck operator shall be suspended from participating in the state and local rotation system for a period of 30 days. ~~The tow truck operator shall remain suspended from participating in the state and local rotation system until the tow truck operator responds to the OCP.~~

(5) through (7) remain the same but are renumbered (6) through (8).

(89) If after a hearing the committee finds the complaint to have merit, the committee may:

(a) and (b) remain the same.

(c) permanently suspend the operator from participating in the state rotation system; or

(d) order appropriate restitution to the prevailing party; or

~~(de)~~ issue some other sanction that a majority of the committee agrees is appropriate.

(910) The committee's decision is subject to judicial review under 2-4-702, MCA.

AUTH: 61-8-911, 61-8-912, MCA

IMP: 61-8-908, 61-8-912, MCA

REASON: The proposed rule changes are offered in response to the September 2010 audit of the Montana Professional Tow Truck Act by the Legislative Audit Division. Specifically, this proposed rule change addresses recommendation number 9 of the Audit Report.

The Audit Report recommended that the Department of Justice require tow truck operators submit their service rates to the Montana Highway Patrol as part of the annual inspection process and to be made available to the Tow Truck Complaint Resolution Committee. Under new (2), this proposed rule follows that recommendation.

The proposed rule change also clarifies that the proper party to receive an initial consumer complaint regarding a tow truck matter is the Office of Consumer Protection (OCP). Additionally, the changes clarify the period of suspension for failing to respond in writing to a consumer complaint forwarded to a tow truck operator by the OCP.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Assistant Attorney General Kelley Hubbard, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail khubbard@mt.gov, and must be received no later than October 17, 2011.

5. Assistant Attorney General Kelley Hubbard, Department of Justice, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department. A copy of the interested person's request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ J. Stuart Segrest
J. Stuart Segrest
Rule Reviewer

/s/ Steve Bullock
Steve Bullock
Attorney General
Department of Justice

Certified to the Secretary of State on August 29, 2011.